



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,093	07/25/2003	Richard D. Ciervo	AO694	2242

7590 05/22/2007  
Arthur G. Schaier  
Carmody & Torrance LLP  
50 Leavenworth Street  
P.O. Box 1110  
Waterbury, CT 06721-1110

EXAMINER
----------

MALAMUD, DEBORAH LESLIE

ART UNIT	PAPER NUMBER
----------	--------------

3766

MAIL DATE	DELIVERY MODE
-----------	---------------

05/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/627,093	Applicant(s) CIERVO, RICHARD D.	
	Examiner Deborah Malamud	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The examiner acknowledges the amendments received 14 September 2006. Claims 1-14 and 16-17 are cancelled; new claim 22 is added; claims 15 and 18-22 are pending.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.
3. The oath or declaration is defective because: Specifically, a corrected statement should read, "I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations 1.56."

### ***Claim Objections***

4. In view of the cancellation of claims 1-14, the objection to claims 8-13 is rendered moot.
5. Claim 22 is objected to because of the following informalities: new claim 22 is an essential duplicate of claim 15. The examiner recommends cancellation of this claim or amendment to distinguish it from claim 15. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. In view of the cancellation of claims 1-14, the rejection of claims 1 and 8-14 under 35 U.S.C 112, second paragraph, are rendered moot.

***Response to Arguments***

7. Applicant's arguments with respect to claims 15 and 22 have been considered but are moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 15 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Schminke (U.S. 4,860,763). Regarding claims 15, 19 and 22, Schminke discloses (col. 2, lines 64-67) "a means and method of cardiovascular conditioning and therapy for rehabilitation," wherein (col. 3, lines 3-43) the "user's heart rate is monitored by a transducer device and the work load is monitored by an appropriate transducer device. Therefore, the system continuously is able to know the heart rate of the user and the corresponding work level being produced by the exercise means. A desired target heart rate is determined for each user." The system includes a control means that "continuously monitors heart rate to insure that the target rate is not exceeded. The work load is increased until the user's heart rate enters a predetermined range at or

around the target heart rate [a "Target Zone"]. At that point, the control means begins timing of the workout period, and controls the work load to cause the user's heart rate to stay within the range around the target heart rate. If the heart rate falls below the target rate, the control means sends a signal to the exercise means to increase the work load incrementally until the user's heart rate is brought back into the target range.

Conversely, if at any time the user's heart rate exceeds the target range, control means instructs the exercise means to decrease the work level until the heart rate is brought back within the range. After the conditioning period is done, the control means reduces the work load to a predetermined level for a predetermined time and then terminates the presentation of the work load to the user." The examiner considers the heart rate and the work load to be included in a generated "out of zone alert." Therefore, the work load is increased (or decreased) continuously, until the heart rate is altered, or until enough time has elapsed in a predetermined workout period. At that time, the work load is automatically reduced, and the workout is eventually terminated. When the sampled heart rate value does satisfy the effective conditions, the work load is adjusted accordingly, indicating that the sampled heart rate value has satisfied the effective conditions.

10. Regarding claim 18, the examiner considers the system of Schminke to naturally include the step of generating an out of zone indication if a successive sampled heart rate value fails to satisfy the effective condition, since the work load continues increased (or decreased) until the heart rate is at a satisfactory value, or until the workout period expires.

Art Unit: 3766

11. Regarding claims 20-21, Schminke's method provides for adjustment of the work load in accordance with the measured heart rate values outside of a "predetermined range." If the heart rate is low, the work load is increased; if the heart rate is high, the work load is increased. Therefore, the examiner considers the method of Schminke to naturally include the step wherein the condition is that the sampled heart rate value is above a threshold minimum value, or below a threshold maximum value.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3766

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Malamud whose telephone number is (571) 272-2106. The examiner can normally be reached on Monday-Friday, 9.00am-5.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
CARL LAYNO  
PRIMARY EXAMINER  
ACTING SPE, AU3766

  
Deborah L. Malamud  
Patent Examiner  
Art Unit 3766